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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street N.W.  
Washington, D.C. 20536

GH

JAN 27 2004

FILE: [REDACTED] Office: New York

Date:

IN RE: Obligor:  
Bonded Alien:

IMMIGRATION BOND: Bond Conditioned for the Delivery of an Alien under Section  
103 of the Immigration and Nationality Act, 8 U.S.C. § 1103

ON BEHALF OF OBLIGOR:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*for* *Mari Johnson*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The delivery bond in this matter was declared breached by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on September 16, 1999, the obligor posted a \$3,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated January 15, 2003 was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of an officer of the Immigration and Naturalization Service (legacy INS), now Immigration and Customs Enforcement (ICE), at 9:00 a.m. on February 7, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On April 2, 2003, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that, according to the EOIR hotline, ICE never filed a Notice to Appear (NTA) with the immigration court. Counsel asserts that ICE no longer has detention authority over the alien and must cancel the bond.

The record reflects that the alien was arrested by ICE and released under the delivery bond on September 16, 1999. ICE records do not reflect that the immigration court has scheduled the alien for a removal hearing.

The Form I-340 specifically demanded the bonded alien's surrender for an interview. The obligor is not relieved of its responsibility to deliver and surrender the bonded alien at the time and place specified in the district director's demand notice because the demand notice directed the alien to appear for interview rather than for removal.

Counsel cites no authority for his proposition that because an NTA may not yet have been filed with the immigration court, ICE has lost detention authority over the alien. Counsel clearly ignores section 236(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1226(a), which authorizes the detention and release on bond of an arrested alien pending a decision on whether the alien should be removed from the United States.

Under the terms of the Immigration Bond Form I-352, the obligor contracted to produce the alien upon demand until: (1) exclusion/deportation/removal proceedings are finally terminated; (2) the alien is accepted by the ICE for detention, deportation or removal; or (3) the bond is canceled for some other reason. The obligor is relieved of its contractual responsibility to deliver the alien only if one of these enumerated circumstances has occurred. As the obligor has not shown any of the above occurrences, the bond is not canceled.

It is noted that the present record contains evidence that a properly completed questionnaire was forwarded to the obligor with the notice to surrender pursuant to the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an ICE officer or immigration judge upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted by the ICE officer for detention or removal. *Matter of Smith*, 16 I&N Dec. 146 (Reg. Comm. 1977).

The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. § 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. § 103.6(e).

Pursuant to 8 C.F.R. § 103.5a(a)(2), personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

The evidence of record indicates that the Notice to Deliver Alien was sent to the obligor at [REDACTED] on January 15, 2003 via certified mail. This notice demanded that the obligor produce the bonded alien on February 7, 2003. The domestic return receipt indicates the obligor received notice to produce the bonded alien on February 3, 2003. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by ICE for hearings or removal. Such bonds are necessary in order for ICE to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited the alien's or the surety's convenience. *Matter of L-*, 3 I&N Dec. 862 (C.O. 1950).



After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The appeal will be dismissed.

**ORDER:** The appeal is dismissed.